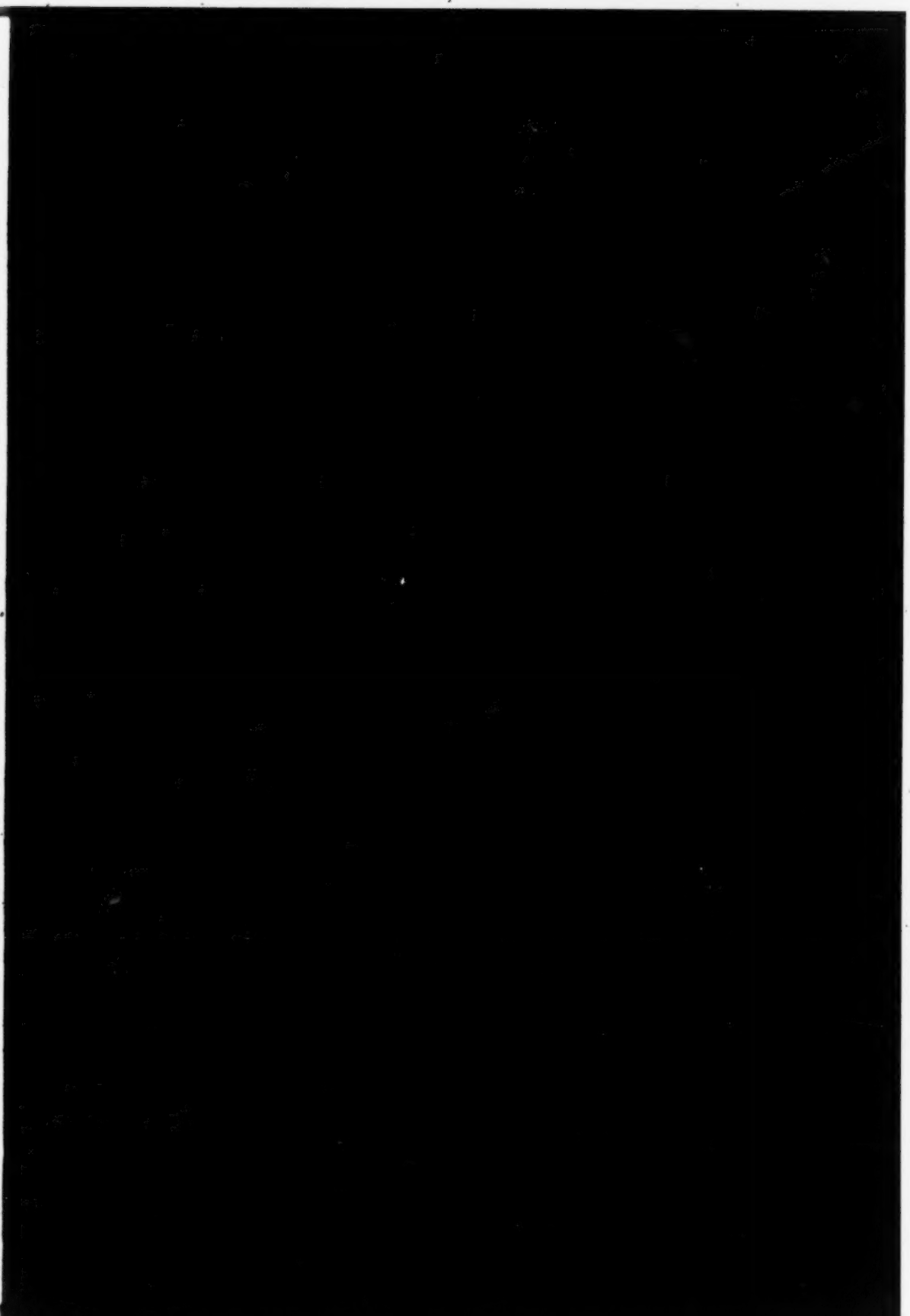

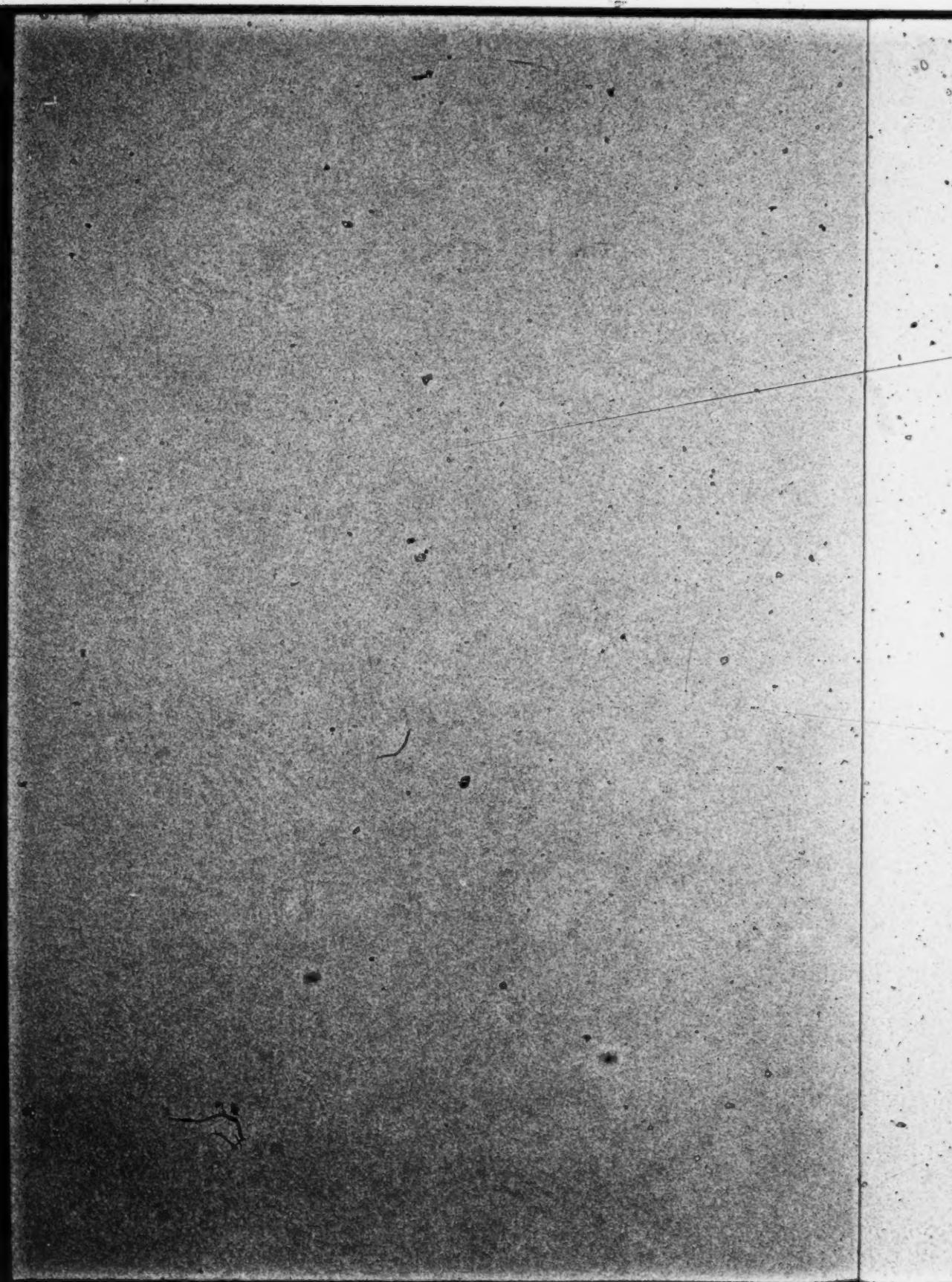

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1003

JAMES R. HOFFA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

CRIMINAL COURTS BAR ASSOCIATION (OF LOS ANGELES COUNTY),

Amicus Curiae.

On Petition for A Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

ANSWER OF THE CRIMINAL COURTS BAR ASSOCIATION OF LOS ANGELES COUNTY TO THE GOVERNMENT'S OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Comes now the Criminal Courts Bar Association of Los Angeles County and in answer to the government's brief in opposition to the granting of a writ of certiorari points out the following:

I

The government has not answered the point raised by the amicus curiae in this case that the removal of juror

Raiford Dees, the only negro on the jury, after the panel had been in trial and almost concluded, placed James R. Hoffa once in jeopardy in violation of the Fifth Amendment to the Constitution of the United States. The government has not answered this contention which is the holding of the laws of the State of California. (*People v. Young*, 100 Cal.App. 18; *People v. Cage*, 48 Cal. 323; *People v. Webb*, 38 Cal. 467; *People v. Hunckeler*, 48 Cal. 331, 334)

The government has talked generally about the juror's mother being ill, and so forth, but there is nothing in the law that we find that permits a juror to be excused without the consent of the defendant without resulting in a defendant being placed once in jeopardy in violation of the Fifth Amendment to the Constitution of the United States. (See *Ex parte Lange*, 18 Wall 163, 21 L.ed. 872; *Green v. U.S.* 355 US 184, 2 L.ed.2d 199)

We respectfully submit that this is an important question of jury procedure which this Court should hear and

II

We also raised the point that it was improper to take the jury to a government military establishment while

of the litigants, to-wit: the government, in this case is not just as improper as housing the jury in the home of a defendant or a defendant's organization.

We find no record of any other jurors having been housed in a military establishment. The very thought that jurors had to be housed in such an establishment and guarded by military men is in itself a frightening psychological influence upon a jury. If jurors felt that this was necessary, they must think "If they must take me here to this military place, this fellow must be pretty bad." We don't even find military guards around the Justices of the Supreme Court when they are threatened with pickets and even with impeachment.

This is also a silent form of testimony against the character of the defendant which he did not have a chance to meet and refute.

We submit that equal justice under the law requires that such procedure with jurors now be forbidden by the Court's granting a hearing and so holding. This phase of the housing of the Hoffa jury was not passed upon.

Attention is called to the fact that while in this military housing that one of the jurors was shown a newspaper article from the July 18 issue of the Chicago Tribune which referred to the fact that Hoffa's motion for judgment of acquittal had been denied and other matters referred to in the testimony.

III

The third point raised by the amicus curiae was the reference to the still pending case on appeal growing out

of the Tennessee conviction. There are decisions both ways on this issue and it should be resolved by this Court. The District of Columbia Circuit holds that it is improper. The Second and Sixth Circuits permit impeachment on a conviction before it is final. (*Jarecki v. Searle & Co.*, 367 US 303, 306, 6 L.ed.2d 859, 862; *Kovach v. U. S.*, 364 US 361, 362, 5 L.ed.2d 128, 130)

Where there is a conflict in the Circuits, it is one of the grounds on which this Court grants certiorari.

IV

The government also slides over our fourth contention that the wide publicity in this case, particularly with reference to the conduct of the then Attorney General, did not, from the government's standpoint, affect the fairness of the trial. We can think of no case where the publicity such as attended this trial could have been more harmful in denying the defendant that fair trial which this Court has said every defendant is entitled to have, no matter with what he is charged. (*Sheppard v. Maxwell*, 16 L.ed.2d 600 [No. 490, Oct. Term 1965]; *Estes v. Texas*, 381 US 541, 14 L.ed.2d 543).

Although space did not permit in our opening petition, we would like to call the attention of the Court to the fact that the unexpurgated copy of the indictment was sent to the jury room containing several counts that were not actually before the jury. In the case of *People v. Bowman* in California, 156 Cal.App.2d 734, an indictment was sent to the jury from which the trial judge had eliminated certain portions but the unexpurgated indict-

ment reached the jury. The California courts reversed the case.

WHEREFORE, the amicus curiae respectfully prays that this Court grant certiorari and that we may be permitted to brief these and other points on the criminal law in the case more fully.

Respectfully,

CRIMINAL COURTS BAR ASSOCIATION OF LOS ANGELES COUNTY

By: MORRIS LAVINE

Attorney for

Amicus Curiae

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

HOFFA ET AL. *v.* UNITED STATES.

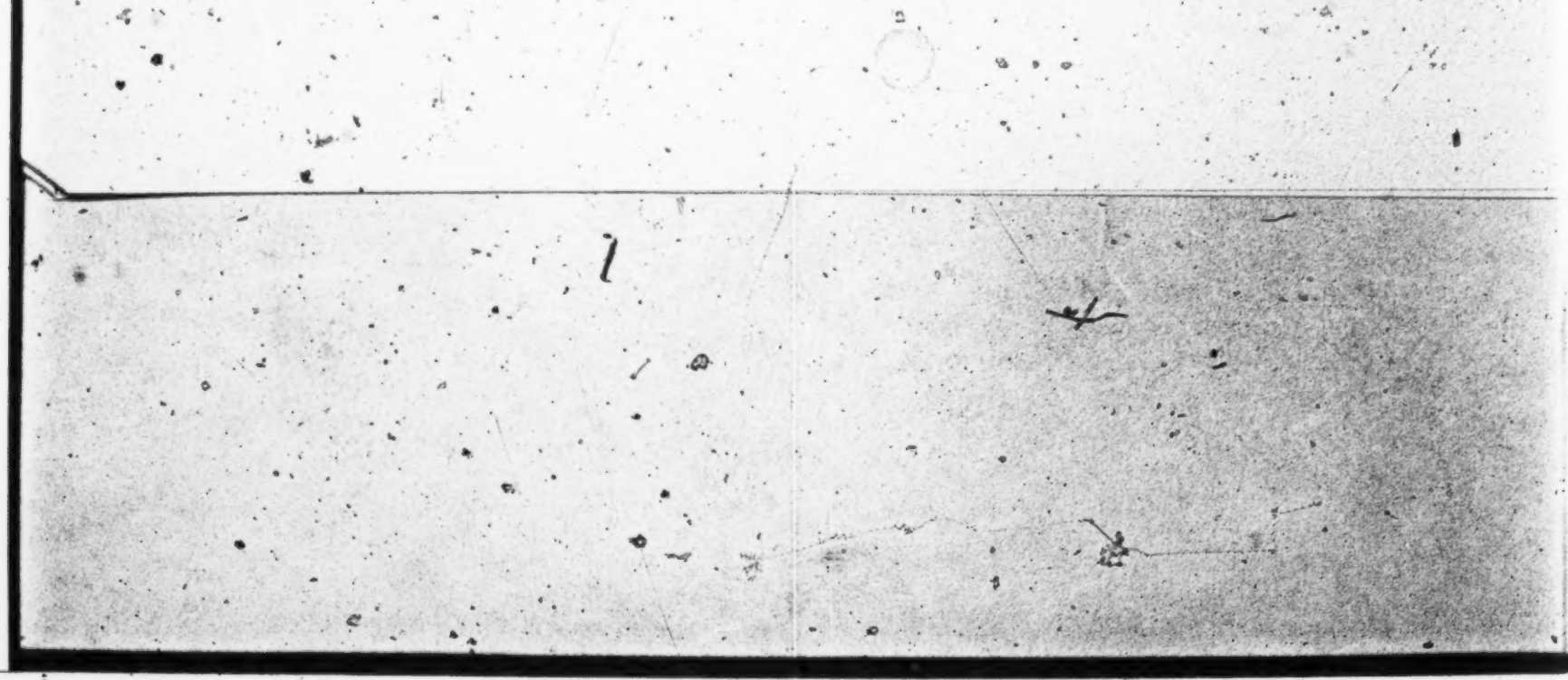
ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

No. 1003. Decided May 22, 1967.

PER CURIAM.

Petitioners were convicted of various counts under a 28-count indictment charging mail and wire fraud, in violation of 18 U. S. C. §§ 1341, 1343, and conspiracy, in violation of 18 U. S. C. § 371. The United States claimed, and the jury apparently found, that petitioners conspired to defraud, and did defraud, the Central States, Southeast and Southwest Areas Pension Fund of the International Brotherhood of Teamsters, with the prime objective of financially rehabilitating Sun Valley, Inc., a real estate enterprise in which certain of the petitioners had important interests. For reasons which follow, we do not reach, one way or the other, any of the contentions urged by petitioners in support of their petition for a writ of certiorari.

In response to the petition, the Solicitor General *sua sponte* has advised the Court that on December 2, 1963, some six months after the indictment in this case, a conversation between petitioner Burris and one Benjamin Sigelbaum, not a defendant in this prosecution, was overheard by agents of the Federal Bureau of Investigation as a result of electronic eavesdropping. The eavesdropping equipment had been installed in Sigelbaum's office, by trespass, some 12 months before this conversation, and thereafter had been maintained in operation. We are informed by the Solicitor General that the recorded conversation was concerned both with the proposed transfer to Sigelbaum of Burris' interest in Sun Valley, and with the conduct of the defense to this prosecution. The Solicitor General has indicated



that the contents of the recording were available to government attorneys involved in this prosecution, but adds that the recording was only "peripherally relevant to the charges underlying [Burris'] conviction."* We are, moreover, advised by him that the information obtained through this electronic eavesdropping was not introduced into evidence at trial, that it was never the basis of any investigative lead, and that it was in part already known, through Burris' own statements, to government attorneys. Unlike the situations in *Black* v. *United States*, 385 U. S. 26, and *O'Brien* v. *United States*, — U. S. —, there was apparently no direct intrusion here into attorney-client discussions. In these circumstances, we find no "adequate justification," *Black* v. *United States, supra*, at 29, now to require a new trial of Burris or of any of the other petitioners; the more orderly and appropriate procedure is instead to remand the case to the District Court for a hearing, findings, and conclusions on the nature and relevance to these convictions of the recorded conversation, and of any other conversations that may be shown to have been overheard through similar eavesdropping. *United States* v. *Shotwell Mfg. Co.*, 355 U. S. 233.

We do not accept the Solicitor General's suggestion that such an inquiry should be confined to the conviction of Burris. We consider it more appropriate that each of these petitioners be provided an opportunity to establish, if he can, that the interception of this particular conversation, or of other conversations, vitiated in some manner his conviction. We do not intend by this to suggest that any or all of the petitioners might, under the circumstances described by the Solicitor General, be entitled to a new trial; we decide only that further proceedings must be held, and findings and conclusions made, to determine the content and pertinence to this case of any such recorded conversations.

*Brief for the United States in Opposition 70.

Accordingly, we grant the petition for a writ of certiorari as to each of the petitioners, vacate the judgment of the Court of Appeals, and remand the case to the District Court for further proceedings. In such proceedings, the District Court will confine the evidence presented by both sides to that which is material to questions of the content of this and any other electronically eavesdropped conversations, and of the relevance of any such conversations to petitioners' subsequent convictions. The District Court will make such findings of fact on these questions as may be appropriate in light of the further evidence and of the entire existing record. If the District Court decides, on the basis of such findings, that the conviction of any of the petitioners was not tainted by the use of evidence thus improperly obtained, it will enter new final judgments as to such petitioners based on the existing record as supplemented by its further findings, thereby preserving to all affected parties the right to seek further appropriate appellate review. If, on the other hand, the District Court concludes after such further proceedings that the conviction of any of the petitioners was tainted, it would then become its duty to accord any such petitioner a new trial. See *United States* v. *Shotwell Mfg. Co.*, *supra*, at 245–246; see also *Shotwell Mfg. Co.* v. *United States*, 371 U. S. 341.

The petition for a writ of certiorari is granted, the judgment of the Court of Appeals is vacated, and the case is remanded to the District Court for further proceedings consistent with this opinion.

It is so ordered.

MR. JUSTICE BLACK would grant certiorari and set the case for argument. He dissents from the vacation of the judgment of the Court of Appeals and from the remand of the case to the District Court.

MR. JUSTICE WHITE took no part in the consideration or decision of this case.